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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/037,460	03/10/98	HASTINGS	325800-626 (P)

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HM22/1026

EXAMINER

SAOUD, C

ART UNIT

PAPER NUMBER

1646

DATE MAILED: 10/26/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/037,460

Applicant(s)

HASTINGS et al.

Examiner

Christine Saoud

Group Art Unit

1646



☒ Responsive to communication(s) filed on Sep 14, 1999

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 54-67, 75-100, and 102-114 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☒ Claim(s) 54-67, 75-92, 102-107, 109, 110, 113, and 114 is/are allowed.

☒ Claim(s) 93-100, 108, 111, and 112 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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DETAILED ACTION

Response to Amendment

1. Claims 53, 68-74 and 101 have been canceled and claims 54-57, 59-60, 62, 95, 102-105, and 107-114 have been amended as requested in the amendment of paper #11, filed 14 September 1999. Claims 54-67, 75-100 and 102-114 are pending in the instant application.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Any objection or rejection of record which is not expressly repeated in this action has been overcome by Applicant's response and withdrawn.
4. Applicant's arguments filed 14 September 1999 have been fully considered but they are not deemed to be persuasive.

Terminal Disclaimer

5. The terminal disclaimer filed on 14 September 1999 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of 5,747,280 has been reviewed and is accepted. The terminal disclaimer has been recorded.

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Double Patenting

6. Claims 93-100, 108 and 111-112 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 08/196,362 (SEQ ID NO:7788 and 7775), 08/346,731 (SEQ ID NO:552), 08/420,856 (SEQ ID NO:552), 08/221,623 (SEQ ID NO:114), and 08/276,163 (SEQ ID NO:15161) for the reasons of record in paper #8. The rejection is being maintained because it is not the only rejection remaining in the instant application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

7. Claims 93-100, 108 and 111-112 stand provisionally rejected under 35 U.S.C. 102(e) as being anticipated by copending Application No. 08/196,362 (SEQ ID NO:7788 and 7775), 08/346,731 (SEQ ID NO:552), 08/420,856 (SEQ ID NO:552), 08/221,623 (SEQ ID NO:114), and 08/276,163 (SEQ ID NO:15161) which have a common assignee with the instant application for the reasons of record in paper #8.

Applicant has requested that this rejection be held in abeyance until indication of allowable subject matter. The lack of a previous rejection over additional prior art and the minimal rejections in general would have been an indication of allowable subject matter, even though there were no allowable claims. It would be improper to withdrawal or hold in abeyance the instant

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rejection because this would require the withdrawal of the provisional double patenting rejection and an indication of allowable claims and therefore, an allowable application. The application is not allowable because the provisional 102(e) rejection is still applicable.

Conclusion

8. Claims 54-67, 75-92, 102-107, 109-110, and 113-114 are allowed.
9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christine Saoud, Ph.D., whose telephone number is (703) 305-7519. The examiner can normally be reached on Monday to Friday from 8AM to 3PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paula Hutzell, can be reached on (703) 308-4310. The fax phone number for this Group is (703) 308-0294.

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Official papers filed by fax should be directed to (703) 308-4227. Faxed draft or informal communications with the examiner should be directed to (703) 308-0294.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

Christine Saoud, Ph.D.
October 21, 1999

CS



JOHN ULM
PRIMARY EXAMINER
GROUP 1800